

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**FRANKIE LEE**

**PLAINTIFF**

**v.**

**No. 3:15CV47-SA-JMV**

**BRANDON HODGES**

**DEFENDANT**

**ORDER OF DISMISSAL**

The court, *sua sponte*, takes up the dismissal of the plaintiff's case filed under 42 U.S.C. § 1983. The plaintiff, a prisoner proceeding *pro se*, seeks review of his sentence imposed under the laws of Mississippi. The plaintiff alleges that he was unlawfully convicted of burglary and grand larceny. He does not challenge the conditions of his confinement, as required under 42 U.S.C. § 1983; he instead challenges the fact and duration of his confinement, a claim which he should have brought as a *habeas corpus* claim under 28 U.S.C. § 2254. A claim under 42 U.S.C. § 1983 does not accrue until the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994). As the plaintiff has not shown that his conviction or sentence has been reversed, expunged, invalidated or impugned by the grant of a writ of *habeas corpus*, his claim under 42 U.S.C. § 1983 is not ripe for consideration and is **DISMISSED** for failure to state a claim upon which relief could be granted, counting as a "STRIKE" under 28 U.S.C. § 1915(g). The dismissal is without prejudice to the plaintiff's ability to file a *habeas corpus* claim under 28 U.S.C. § 2254.

**SO ORDERED**, this, the 29th day of May, 2015.

/s/ Sharion Aycock  
**U.S. DISTRICT JUDGE**